

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

OTHMAN ARJOUAN,

Plaintiff/Petitioner,

v.

LATIFA BINT-ALL AL-GABRY
CABRÉ,

Defendant/Respondent.

No. 1:17-cv-00782-PJK-JHR

**ORDER GRANTING DISMISSAL WITHOUT PREJUDICE SUBJECT TO
CONDITIONS**

THIS MATTER comes before the court on Petitioner Othman Arjouan's Voluntary Motion to Dismiss Petition Without Prejudice filed June 13, 2018 (ECF No. 108). After a response from Respondent Latifa Bint-All Al-Gabry Cabré and a reply from Mr. Arjouan, the court issued a Notice of Conditions for Voluntary Dismissal filed June 29, 2018 (ECF No. 112). In its notice, the court ordered Mr. Arjouan to file a response by 5:00 p.m. MDT on Thursday, July 5, 2018, noting that if Mr. Arjouan failed to file a response or withdraw his motion by that time, the court would deem Mr. Arjouan to have consented to

voluntary dismissal without prejudice on the condition that (1) he pay Ms. Cabré's costs and attorney's fees (less any fees for work that may be utilized in subsequent litigation of the same claim) and (2) the court will

vacate its order excluding the time from January 4, 2018, for the purposes of the well-settled child defense (ECF No. 51). If Mr. Arjouan agrees to these conditions but fails to comply within a reasonable time, the dismissal will be with prejudice.

ECF No. 112, at 7; see Unioil, Inc. v. E.F. Hutton & Co., 809 F.2d 548, 555 (9th Cir.

1986) (“[A] plaintiff who knows or has reason to know that he may withdraw his motion for dismissal will be deemed to have consented to the conditions attached to the voluntary dismissal unless he withdraws his motion within a reasonable time.”), abrogated on other grounds by Townsend v. Holman Consulting Corp., 929 F.2d 1358 (9th Cir. 1990). Mr. Arjouan did not file a response or withdraw his motion by the deadline. Accordingly, the court will grant the motion on the conditions stated above, and the Respondent may file an application for an award of recoverable attorney’s fees and a motion to tax costs.

NOW, THEREFORE, IT IS ORDERED that


(1) Mr. Arjouan’s Voluntary Motion to Dismiss Petition Without Prejudice filed June 13, 2018 (ECF No. 108), is granted subject to the condition that Mr. Arjouan pay Ms. Cabré’s costs and attorney’s fees that she has incurred in defending this suit, less any fees for work that may be utilized in subsequent litigation of the same claim;¹ and

(2) The court vacates its order excluding the time from January 4, 2018, for the purposes of the well-settled child defense (ECF No. 51); and

(3) The trial of this matter set for July 18, 2018 (ECF No. 107) is vacated.

¹ The court notes that if Mr. Arjouan fails to comply with this condition within a reasonable time, the dismissal will be with prejudice. See Choice Hotels Int’l, Inc. v. Goodwin & Boone, 11 F.3d 469, 471 (4th Cir. 1993); Lau v. Glendora Unified Sch. Dist., 792 F.2d 929, 930 n.2 (9th Cir. 1986).

DATED this 5th day of July 2018, at Santa Fe, New Mexico.


United States Circuit Judge
Sitting by Designation